

Cambridge University Press

978-0-521-51445-3 - Skeletons in the Closet: Transitional Justice in Post-Communist Europe

Monika Nalepa

Excerpt

[More information](#)

1

Introduction

The major was dragged over to a tree by several fighters. His ankles were tied and he was strapped to one of the lowest branches. He kicked at the rope and paper forints fell from his pockets. In a few seconds the winds scattered more money than a worker could have saved in years. His body was only three feet from the ground. The revolutionists gathered leaves and paper and piled them under the suspended major. He screamed and pleaded for mercy. He cried out that he would cooperate with us and would tell us all the AVH names we wanted. But the students and workers just laughed at him. They brought the other AVH police over at gunpoint to watch. They lit the fire. As the flames licked at his hair, the AVH men turned white at the sight. They were led away to be locked up. (Beke 1957, 50)¹

Laszlo Beke wrote this in “A Student Diary: Budapest October 16–November 1, 1956.” Beke participated in the Hungarian Uprising, by far the bloodiest of the anticommunist protests in the history of communist rule in Europe (Beke 1957). The revolution ended with the Red Army effecting a massive crackdown on anticommunist forces followed by widespread repercussions against the revolution’s organizers. The revolutionists’ casualties vastly outnumbered those for the Soviet-backed regime.

The Budapest insurgents did not realize their main goal of returning democracy to Hungary until 1989, when a wave of democratic transitions transformed East Central Europe. The most surprising and still under-researched aspect of these transitions was their peaceful nature. In a little

¹ The AVH was the Hungarian secret political police. After the uprising, the tasks of the AVH were transferred to a new agency within the Ministry of Interior. Popularly referred to as the III/3 agency, it recruited most of its personnel from the former AVH and essentially followed the same operational tactics.

Cambridge University Press

978-0-521-51445-3 - *Skeletons in the Closet: Transitional Justice in Post-Communist Europe*

Monika Nalepa

Excerpt

[More information](#)

Introduction

over a year, single-party communist regimes fell in twenty-seven countries – almost without bloodshed.

Beke's account from the 1956 Hungarian Uprising reflects the retribution that fallen dictators face. The ripest moment for such retribution is in the immediate aftermath of the transition, when memories of the ancien régime are vivid and demand for settling accounts is most pressing. Despite urgently needed political and economic reforms, little can stop the former opposition from bringing the former autocrats to justice.

Surely the communist rulers must have contemplated such scenarios and anticipated falling victim to political revenge. Consequently, they should have resisted stepping down as long as they could. The communist leadership had options other than negotiating with the opposition. They could have clung to their seats. But according to historical and sociological accounts (Los 2003; Zybortowicz and Los 2000), many opted for new careers as economic managers of privatized companies. Others from the top echelons of communist parties reformed their political organizations into modern social democratic parties that eventually became competitive in democratic elections (Grzymała-Busse 2002). The existence of these career options suggests that the outgoing communists maintained a deep-seated confidence that they would not be subject to retribution but would instead be permitted to keep their jobs. Polish and Hungarian dissidents themselves were surprised by the communists' willingness to initiate negotiations (Bozóki 2002; Dudek 2004; Roszkowski 2000).

Why did the communists allow free elections in their political systems? They could have anticipated that the former opposition would emerge victorious in these elections. There are normative arguments explaining why the opposition refrained from transitional justice (Ackerman 1992; Holmes 1994). But such normative desirability cannot constrain strategic politicians from pursuing policies that are popular. This is particularly true when such policies allow politicians to win office more easily and hold it for longer, and may even be a source of rents. The transitional justice policy featured in this book – “lustration” – fits this description perfectly because it denies public office to members and collaborators of the ancien régime. Lustration as a transitional justice policy pales in comparison with Laszlo Beke's dramatic description of the AVH officer being torched alive. Yet contrary to what one would expect, the departing communists in

Cambridge University Press

978-0-521-51445-3 - Skeletons in the Closet: Transitional Justice in Post-Communist Europe
 Monika Nalepa

Excerpt

[More information](#)

Introduction

Table 1.1. *Lustration and declassification in post-communist Europe: the first fifteen years after the transition.*

| | 1990 | '91 | '92 | '93 | '94 | '95 | '96 | '97 | '98 | '99 | 2000 | '01 | '02 | '03 | '04 |
|----------------|------|-----|-----|-----|-----|-----|-----|-----|-----|-----|------|-----|-----|-----|-----|
| Bulgaria | LT | LT | LT | LT | | LT | LT | LT | | LT | | | | | |
| Czech Republic | | LT | LT | | | LT | | | | | LT | LT | | LT | |
| Estonia | | | | | | LT | | | | | | | | | |
| Hungary | | | | | LT | LT | LT | LT | LT | | | LT | LT | LT | LT |
| Lithuania | LT | LT | LT | LT | LT | LT | | | | | | | | | |
| Latvia | | | LT | | | | | | | | | | | | |
| Poland | | | LT | | LT | LT | LT | LT | LT | LT | | LT | LT | LT | LT |
| Romania | LT | LT | LT | LT | LT | LT | | | | | LT | LT | LT | LT | LT |
| Slovakia | | | | | | | | | | | | | | LT | |

Notes: L represents the passage of lustration laws by legislatures; a downward arrow represents a law struck down by the president (P), by the Constitutional Court (C), or by the legislature (L); an upward sloping arrow represents that the law was made harsher or upheld – again, by the president (P), by the Constitutional Court (C) or by the parliament in a subsequent term (L). The shaded cells represent the periods in which a lustration law was in force. The diagonal striped cells indicate periods in which the successor parties of the communist autocrats (who I refer to throughout the book as post-communists) held parliamentary majorities.

Poland, Hungary, Slovakia, Latvia, and Romania did not face even mild retribution in the form of lustration.

On the other hand, with other East Central European countries, the peaceful pattern of regime turnover did not shield members and collaborators of the ancien régime from lustration. In fact, no country in post-communist Europe avoided lustration indefinitely. The variation in post-transition lustration is depicted in Table 1.1, which shows when lustration went into effect in nine East Central European countries over the first fifteen years following the transition.

Czechoslovakia (later the Czech Republic) and Lithuania stand out as the region’s “eager lustrants,” while Poland, Hungary, and in particular Slovakia appear to be the lustration laggards. However, neither Poland, Hungary, nor Slovakia refrained from lustration altogether. Instead, these countries, as well Romania and Estonia, experienced significant delays before lustration was adopted and archived secret police files became

Cambridge University Press

978-0-521-51445-3 - Skeletons in the Closet: Transitional Justice in Post-Communist Europe

Monika Nalepa

Excerpt

[More information](#)

Introduction

public. A further distinctive feature of implementing lustration in Poland, Hungary, Bulgaria, Romania, and Lithuania is that these laws were adopted when the former communist regimes' successor parties actually held parliamentary majorities. The puzzling phenomena of Table 1.1 set the agenda for this book:

- Why did opposition parties keep their promises of amnesty?
- Why and when were those promises broken?
- Why did the successors of former autocrats break them?

My explanation distinguishes three critical moments:

- The pre-transition stage, when the communist party is in charge and various dissident groups start getting organized
- The transition stage, during which the communists sit together with the opposition at roundtables to negotiate transitions to democracy based on an exchange: the amnesty for outgoing autocrats for free or semifree democratic elections
- The post-transition stage, during which the deals struck at the roundtable are enforced or broken

1.1. *Why Lustration?*

This book is about who decides to lustrate, when these choices are made, and why. In general, lustration laws can be described by three parameters: All persons in set X are screened for committing action y in the past, and if the screening procedure finds a person in X responsible for engaging in action y , he or she faces sanction z . The range of the first parameter, set X , is usually defined in terms of currently held political offices or social positions. This can include members of parliament (MPs), senators, teachers, doctors, or even priests. The second parameter, y , describes the type of collaboration that constitutes the subject of screening. Types of collaboration can range from membership in the authoritarian party, to leadership in that party, to working as an informer of the authoritarian security apparatus or working as a professional undercover agent of the secret political police. The third parameter, z , describes the sanction meted out to targets who have been found responsible for the targeted activity. The sanction ranges from merely revealing the target's past activity to the public to shaming combined with a prohibition on holding public office.

Lustration and declassification have usually been considered types of "transitional justice" procedures. Transitional justice, in its most general

Cambridge University Press

978-0-521-51445-3 - Skeletons in the Closet: Transitional Justice in Post-Communist Europe

Monika Nalepa

Excerpt

[More information](#)

Introduction

sense, encompasses legal institutions designed to settle scores with members and collaborators of an *ancien régime* (Alvizatos and Diamanourou 1997; Cassel 1998; Choi and David 2006; Elster 2004; González Enríquez, Brito, and Aguilar Fernández 2001; Kaminski and Nalepa 2006; Kritz 1995; McAdams 1997, 2001; Offe and Poppe 1999; Posner and Vermuele 2004; Roht-Arriaza and Mariezcurrena 2006; Schwartz 1995; Teitel 2000; Tolley 1998).² The procedures of transitional justice fall into the following four categories: (1) trials of former perpetrators of human rights violations; (2) compensation for victims; (3) legislative acts condemning the former regime; and (4) truth revelation procedures. The first category includes trials as well as lifting the controlling statutes of limitations that may have expired for crimes committed when the *ancien régime* remained in power. Crimes that would otherwise have been time-barred can be prosecuted. Second, compensation to victims could range from official apologies to monetary compensation to the restitution of rights to property that was confiscated by the *ancien régime*. The third category covers legislative acts proclaiming the criminality of the *ancien régime* as well as legislation expropriating former authoritarian parties of illegitimately acquired assets. Finally, truth revelation procedures comprise lustration and declassification, which opens to the public archives of the former secret political police and truth commissions (Elster 1998, 2004). Truth commissions are temporary bodies of formal inquiry appointed to document the criminal activity of the *ancien régime*. Truth commissions collect and record testimony from victims and perpetrators. Some truth commissions, such as the South African Truth and Reconciliation Commission, have been accorded subpoena power as well as other investigative authority to search suspects and seize evidence (Hayner 2001, 214). Usually their operation is restricted with a sunset provision. If a commission uncovers evidence of human rights violations, it issues a public report that frequently names specific perpetrators (Hayner 2001).

Truth revelation procedures are a unique subcategory of transitional justice. First, they are empowered to assign blame to all sides of the political conflict (Gibson 2006). By uncovering information that was secret prior to the transition, such procedures can implicate former autocrats as well as their resisters. In *Overcoming the Apartheid*, James Gibson (2004) explains why the final report of the South African Truth and Reconciliation

² Throughout this book, I use the term *ancien régime* to refer to the authoritarian regime preceding the transitional negotiations.

Cambridge University Press

978-0-521-51445-3 - Skeletons in the Closet: Transitional Justice in Post-Communist Europe
Monika Nalepa

Excerpt

[More information](#)

Introduction

Commission was so controversial. It cited evidence that members of the African National Congress – including Winnie Mandela (Nelson Mandela’s wife) – were responsible for political violence against the authoritarian enforcement apparatus. Findings of the Peruvian Truth Commission – initially expected to assign blame only to the communist guerrillas – were similarly surprising. The commission found that not only the communist Shining Path was guilty of human rights violations but that the government enforcement apparatus was culpable too.

Likewise, lustration and declassification have the potential for exposing unexpected facts about political violence or human rights violations that took place prior to the transition. For example, in the mid-1970s, students from Krakow organized a dissident group called the Grupa Krakowska. One of its members, Stanislaw Pyjas, was continuously being harassed by the secret police. At one point, the police threatened to manufacture false evidence of Pyjas’s collaboration with them and release it to Grupa Krakowska’s members. He continued to refuse. In May 1977, Pyjas was captured and beaten to death. This sudden manifestation of political violence brought an upsurge of anticommunist resistance in Poland.³ It eventually led to the establishment of the Laborers’ Defense Committee (KOR). All the participants of Grupa Krakowska emerged as prominent dissidents. During the year following the transition, they assumed powerful positions in politics and the media. Yet, in 2001, a journalist of one of the leading dailies and former participant of the Grupa Krakowska revealed that Leslaw Maleszka, one of the group’s participants, had informed against his colleagues in Grupa Krakowska and was indirectly responsible for Pyjas’s murder.⁴ The community of former dissidents was shocked to learn that a dissident from Pyjas’s own circle had been indirectly responsible for his murder.

But the Grupa Krakowska example is neither surprising nor unique. Indeed, the mechanism is illustrated well in Krzysztof Kieslowski’s 1981 movie *Blind Chance*. The movie is divided into three parts. In one part, the main character, Witek Długosz, plays the role of a young communist. In

³ Pyjas’s death was a surprise to the communist authorities as well, because the secret police had planned “only” to intimidate him with a severe beating. According to the Institute of National Remembrance (IPN) prosecutor, Michal Urbaniak, if the secret police had planned to have him murdered, they would not have abandoned him in a driveway, as they did (Danko 2008).

⁴ Incidentally, Maleszka had been employed after the transition as senior writer at another of the leading daily newspapers; I return to the Pyjas story in Chapter 6 while explaining the structure of dissident organizations.

Cambridge University Press

978-0-521-51445-3 - Skeletons in the Closet: Transitional Justice in Post-Communist Europe

Monika Nalepa

Excerpt

[More information](#)

Introduction

another part, he becomes a dissident. And in the last, Witek aspires to be politically neutral and to avoid actively either supporting or resisting the authoritarian regime. As postulated in the film, which of the three roles Witek assumed depended simply on whether Witek caught the train from Łódź to Warsaw – hence the title, *Blind Chance*. I think that Kieslowski intended to stress the blurry lines between Witek’s different roles and the path-dependence of his choices. Surprisingly, Witek has the hardest time trying to maintain neutrality. But the saddest episode is one in which he is a member of an underground dissident printing group and ends up being expelled because his fellow co-conspirators suspect him of being a secret police agent. As the viewers learn later, a Catholic priest named Father Stefan – not Witek – informed the communist police about the location and activities of the secret printing house. Ironically, Witek turns to Father Stefan for consolation after losing his co-conspirators’ trust. Father Stefan advises him, “Witek, pray – pray so that you don’t hate people. This is conspiracy, so responsibility counts double: once someone suspects you of collaboration, it is impossible to shake off a suspicion.”

The uncertainty about who is on which side of the ancien régime is pervasive in *Blind Chance*. Just as it was difficult to know who was a collaborator, it is equally complicated to know who would benefit or lose from lustration or declassification.

Contrast this with the way in which Italy dealt with its Fascist autocrats. In April 1945, communist partisans arrested Benito Mussolini and his lover, Claretta Petacci, at Lake Como. A few days later, they were executed by Walter Audisio, a partisan whom Mussolini had earlier pardoned from a jail sentence. It took Audisio three attempts before he finally found a gun that would fire. The next day, Mussolini’s and Petacci’s mutilated corpses were strung upside down in a public square in Milan to broadcast how the resistance dealt with its tyrant (Luzzatto 2005).

What distinguishes the victors’ justice meted out, for example, to Mussolini from the application of transitional justice procedures such as lustration in East Central Europe is the secret information factor. Although the identities of informers were unknown in East Central Europe, in Fascist Italy it was fairly clear who the tyrant and his closest collaborators were (Luzzatto 2005). In the context of long-lived authoritarian regimes, the gray area between resisting and supporting the ancien régime is wider than in short-term authoritarian episodes. Neither amnesty nor transitional justice carries the same meaning as they do in the short-term episodes that tend to follow military coups. The longer a regime is in power, the harder it

Cambridge University Press

978-0-521-51445-3 - *Skeletons in the Closet: Transitional Justice in Post-Communist Europe*

Monika Nalepa

Excerpt

[More information](#)

Introduction

becomes to separate the guilty parties from the innocent. For one, infiltration reaches wider and wider areas of public and private life. Is someone who agrees to rent out his apartment to the secret police for recruitment purposes a collaborator? What if the collaborator is unaware of the activity transpiring in his apartment? Suppose that someone agrees to provide the secret police with information not pertaining to any dissident activity in exchange for getting a passport to go abroad. Later in this book, I use archival research to demonstrate that the secret police could make use of even seemingly irrelevant information to recruit new informants.⁵ However, if someone was not aware of secret police recruitment tactics, he or she cannot be regarded as guilty of conscious collaboration.

Transitional justice in contexts where the attribution of blame is almost certain and the distribution of blame is skewed to one side of the political spectrum (like post-Fascist Italy) is different from situations in which the blame is distributed more evenly. Transitional justice in which the “winning side” metes out justice to the “losing side” is often referred to as victors’ justice and likened to acts of pure revenge. The outcome of such transitional justice procedures is predictable and rewards the winners further, while making it difficult for the losers to recover losses and eventually reconcile into society.

Transitional justice includes not only the relevant legislation but also the research dealing with addressing the wrongs committed by members and collaborators of the ancien régime (Kritz 1995; Poganyi 1997). A growing literature on transitional justice associates successful democratization with achieving reconciliation between the supporters and the resisters of the former authoritarian regime; there, reconciliation is understood as the capacity for sharing common democratic institutions

⁵ The hazards of becoming an involuntary collaborator, such as those that Witek faced, are well described in one of the samizdat publications that started circulating in the aftermath of the martial law crackdown. *The Little Conspirator* was a manual for dissidents conspiring underground. It had special sections devoted to interactions with the secret police, such as interrogation, calls to be a witness in court, searches, and others. The manual instructed dissidents of their rights, informing them when it was legal to refuse questioning. Importantly, it cautioned them against sharing even seemingly innocuous information with the secret police. Innocuous pieces of information about a person targeted by the secret police could be, for instance, lectures attended by that target, the name of his girlfriend, or his hobbies. Such information could easily be used to intimidate the target when he would be approached by the secret police officer, who would initiate the conversation by saying, “We know everything about you; we know whose lectures you attend, who you date and hang out with” (Anonymous).

Cambridge University Press

978-0-521-51445-3 - Skeletons in the Closet: Transitional Justice in Post-Communist Europe
Monika Nalepa

Excerpt

[More information](#)

Introduction

(Howard-Hassmann 1995; Torpey 2003). An alienated society divided into groups and classes suspicious of one another does not pose an especially great problem for an authoritarian regime that does not legitimize itself through fair elections. In contrast, democratic institutions presuppose a consensus about obeying common “rules of the game” and rely on a culture of trust and reciprocity (Knight 1992; North 1990; Putnam, Leonardi, and Nanetti 1993). For democratic consolidation, citizens must respect and participate in shared democratic institutions. For instance, they should trust courts as the final arbiters in adjudicating disputes between one another and respect judicial decisions even if they disagree with them. They should also recognize results of elections, even if their favorite candidate loses (Przeworski 1992). Many proponents of transitional justice subscribe to the view that its goal is forward-looking reconciliation rather than backward-looking revenge. However, for many former “rank and file” oppositionists in East Central Europe, transitional justice, with its reconciliation-promoting ambitions, is like the “morning after” effect following the carnival of a revolution⁶:

In a strongly alcoholic situation with lots and lots of vodka, perhaps I could picture myself reconciled with a former supporter of the communist regime. But normally, never! But jokes aside, asking about reconciliation in Poland is like asking about the AC in a car that has no wheels with the car dealer trying to convince you that AC is the car’s most important feature! (interview 2004: PA9 when asked about the conditions for reconciliation in post-communist Poland 2004).⁷

Whether transitional justice procedures, such as lustration, contribute to reconciliation is an important normative question. But it is not the issue that is the subject of this book. Other works deal at length with this problem (Appel 2005; Choi and David 2006; Horne and Levi 2004; Letki 2002; Nalepa 2007). No academic research so far, however, has dealt with the possible strategic uses of lustration. Contrary to existing trends in the transitional justice literature, which ask whether or not to engage in transitional justice, I believe that the following is an equally important question: *How do the competing demands for implementing or avoiding transitional justice*

⁶ *Carnival of a Revolution* is the title of a historical narrative of the transitions in Central Europe by Kenney (2003).

⁷ All interviews were conducted by the author in 2004 and are coded according to the following rules: The first letter of the code represents the country of the interviewed politician: P = Poland, C = Czech Republic, H = Hungary; the second letter represents the affiliation: N = neutral, L = liberal, A = anticommunist, C = post-communist.

Cambridge University Press

978-0-521-51445-3 - Skeletons in the Closet: Transitional Justice in Post-Communist Europe

Monika Nalepa

Excerpt

[More information](#)**Introduction**

play out to create specific policy outcomes at time x instead of time y? Whether or not one believes that transitional justice is normatively desirable, post-transitional societies have gone about dealing with their respective pasts in different and often puzzling ways. In this book, I demonstrate that lustration remains a salient political issue with politicians even when voters have no particular concern with the authoritarian past anymore. Even when voters no longer consider lustration salient enough to affect their voting decisions, politicians have good reasons to feel strongly about it. Harsh bills may and have ended the careers of politicians who had previously collaborated with the communist regimes (Appel 2005; David 2003; Horne and Levi 2004; Letki 2002). These laws may be used as tools of political manipulation that eliminate electoral competition. If politicians care about retaining office and if they care about greater representation of their parties in legislatures, they cannot ignore lustration. In advanced democracies, the analogues to lustration are transparency or anticorruption legislation that screens politicians for unethical behavior (Alt, Lassen, and Rose 2007). This feature makes lustration particularly important for political scientists because it very directly affects the careers of politicians.

The Polish presidential elections in 2000 illustrate well the consequences of lustration. According to the public opinion polls, a few months prior to the election, Andrzej Olechowski was almost tied with the incumbent Aleksander Kwasniewski. After declaring, pursuant to the Polish lustration law,⁸ that he had collaborated with the former secret police, Olechowski did not even make it to the runoff. In 2002, Hungarian prime minister Peter Medgyessy narrowly avoided the collapse of his newly created cabinet after an article in a Budapest daily revealed that he had worked as an undercover agent for the military counterintelligence (BBC International Monitoring 2002). More recently, Polish deputy prime minister Zyta Gilowska was forced to resign from office after being accused of collaborating with the Polish secret police. Her resignation eventually brought down the entire cabinet (Easton 2006).

Whether we consider politicians to be office seekers or policy-oriented actors, they have a stake in lustration. For office-seeking politicians,

⁸ The Polish lustration law requires that candidates for public office declare before elections whether they had worked for or consciously collaborated with communist secret services. Declarations of collaboration are published. The bill does not ban ex-collaborators from holding any position. The voters themselves decide whether the ex-collaborator can hold the office in question (Dziennik Ustaw 2002).